

California Regional Water Quality Control Board
North Coast Region

ORDER NO. R1-2006-0081

Conditional Waiver
For
Discharges Related to Specific Land Management Activities
in the
Scott River Watershed
North Coast Region

The California Regional Water Quality Control Board, North Coast Region, (hereinafter Regional Water Board) finds that:

1. The Scott River watershed was listed as impaired due to both high sediment loads and high water temperatures (Section 303(d) of the Clean Water Act). Federal regulations require that a total maximum daily load (TMDL) be established for 303(d) listed water bodies for each pollutant of concern.
2. On December 7, 2005, the Regional Water Board adopted Resolution No. R1-2005-0113, amending the *Water Quality Control Plan for the North Coast Region* (Basin Plan) to include the *Action Plan for the Scott River Watershed Sediment and Water Temperature Total Maximum Daily Loads*. The TMDL and Action Plan set load allocations and assigned implementation responsibilities.
3. TMDL Action Plans (also know as a TMDL Implementation Plans) must comply with the State Non-point Source Policy (May 2004) by regulating the discharge of waste through prohibitions, waste discharge requirements or conditional waivers as necessary to control discharges of waste to waters of the State. (Cal. Code of Regs., tit. 23, § 2915.) Discharges cannot cause or contribute to water quality or beneficial use impairment.
4. Water Code section 13260(a) requires that any person discharging waste or proposing to discharge waste within any region that could affect the quality of the waters of the state, other than into a community sewer system, shall file with the appropriate regional board a Report of Waste Discharge (ROWD) containing such information and data as may be required by the Regional Water Board.
5. The Regional Water Board has a statutory obligation to prescribe waste discharge requirements except where the Regional Water Board finds that a waiver of waste discharge requirements for a specific type of discharge is in the public interest pursuant to Water Code section 13269.
6. Water Code section 13269 provides that any such waiver of waste discharge requirements shall be conditional, enforceable and may be terminated at any time by the Regional Water Board.
7. State Water Board Resolution No. 68-16 Statement of Policy with Respect to Maintaining High Quality of Waters in California (Resolution No. 68-16) requires Regional Water Boards, in regulating the discharge of waste, to maintain high quality waters of the state, will not unreasonably affect beneficial uses, and will not result in water quality less than

that described in Regional Water Board's policies. This Order is consistent with Resolution 68-16 because it requires management practices and measures to be implemented to achieve water quality standards and to prevent nuisance. The Scott Action Plan establishes an iterative process that includes evaluation and then implementation of management practices in a timely manner to reduce discharges of waste. These conditions are enforceable through this conditional waiver. Changes in water quality that may occur as a result will be to improve, over time, the quality of the waters, not to cause degradation. Thus, any change in water quality will be consistent with maximum benefit to the people of the State and will not unreasonably affect beneficial uses.

8. On April 18, 2006, the State Water Resource Control Board (State Water Board) held a workshop on the Scott River TMDL Action Plan. At the close of the workshop, the State Water Board closed public comment on the Action Plan except for issues related to flow and improvements to the implementation plan.
9. On May 10, 2006, the Regional Water Board Executive Officer submitted a letter for the State Water Board's consideration proposing the development and consideration of a conditional waiver for dischargers in the Scott River watershed who comply with the terms of the Action Plan and are not otherwise regulated under another permit.
10. On June 21, 2006, the State Board adopted Resolution No. 2006-0046 approving the amendment to the North Coast Region Basin Plan as presented in the Scott River TMDL Action Plan. The State Board found that an "effective conditional waiver is an essential element of addressing sediment and temperature impairments in the Scott River watershed." The resolution further stated that the Regional Water Board staff would propose a conditional waiver for those "dischargers who are not otherwise regulated in the Scott River watershed" for the Regional Water Board's consideration at the August 2006 hearing.
11. As authorized by Water Code section 13269, this Order conditionally waives the requirement to file ROWDs and obtain WDRs for discharges addressed in the *Action Plan for the Scott River Watershed Sediment and Water Temperature Total Maximum Daily Loads*, for dischargers who choose to participate in the on-going collaborative programs including the implementation, as applicable, of the recommended measures described in Table 4 of the *Action Plan for the Scott River Watershed Sediment and Water Temperature Total Maximum Daily Loads*.
12. The Regional Water Board, acting as the lead agency under the California Environmental Quality Act (Public Resources Code, sections 21000-21777) (CEQA), conducted an environmental analysis as part of the Scott River TMDL development and adoption process in accordance with title 14, California Code of Regulations, section 15251(g). This section certifies the Basin Plan amendment process as functionally equivalent to, and therefore exempt from, the CEQA requirement to prepare an environmental impact report or a negative declaration and initial study.
13. The Regional Water Board, in accordance with CEQA and State Guidelines, determined that no significant adverse environmental impacts, individually, or cumulatively would arise from the implementation of the Scott River TMDL Action Plan, provided that actions

are in compliance with its prohibitions, provisions, criteria, and conditions. The *Staff Report for the Action Plan for the Scott River Watershed Water Temperature and Sediment Total Maximum Daily Loads* (December 7, 2005) contained a CEQA checklist (Appendix E). This conditional waiver does not result in any physical changes in the environment different from the Scott River TMDL Action Plan and is therefore exempt from CEQA under title 14, California Code of Regulations, sections 15061, subdivision (b)(3). Two categorical exemptions are also applicable under title 14, California Code of Regulations sections 15307 and 15308, for certain actions by regulatory agencies to maintain, restore, or enhance natural resources and to protect the environment. The Regional Board will file a notice of exemption in accordance with title 14, California Code of Regulations, section 15062.

14. This conditional waiver shall not create a vested right and all discharges covered by it shall be considered a privilege, not a right, as provided in Water Code section 13263.
15. This conditional waiver shall not apply to any discharges for which a WDR, waiver, or prohibition is issued under a separate action of the Board. This conditional waiver expires upon Regional Water Board adoption of a superseding regulatory action after the evaluation period specified for each source category, or after five years, whichever occurs first. The conditional waiver does not preclude the need for permits which may be required by other local or governmental agencies, and does not preclude the Regional Water Board from administering enforcement remedies (including civil penalties) pursuant to the Water Code.
16. The Executive Officer or Regional Water Board shall terminate the applicability of this Order to any activities at any time when such termination is in the public interest and/or the activities could have a significant adverse affect on the quality or beneficial uses of the waters of the state.
17. The provisions of this Order are severable; and, if any provision of this Order or the application of any provision of this Order to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of this Order shall not be affected thereby.
18. The Regional Water Board conducted a public hearing on August 9, 2006, in Santa Rosa, California, and considered all evidence concerning this matter and adopted the *Conditional Waiver for Waste Dischargers in Scott River Watershed in the North Coast Region*.
19. The Regional Water Board, based on the testimony received at the aforementioned hearing, determines that the adoption of the waiver of waste discharge requirements in accordance with Order No. R1-2006-0081 will be consistent with the Basin Plan, will be in the public interest, and will not have a significant impact on the environment.
20. As provided by Water Code section 13350(a), any person may be liable for civil penalties if that person intentionally or negligently discharges waste, or causes waste to be deposited where it is discharged, into the waters of the state and creates a condition of pollution or nuisance.

21. Effective January 1, 2004, Water Code section 13269 requires that waivers include the performance of individual, group, or watershed-based monitoring. Table 4 of the *Action Plan for the Scott River Watershed Sediment and Water Temperature Total Maximum Daily Loads* contain provisions requiring monitoring of land management activities (or waste discharge sources) and waste prevention control at various time, scales and locations. Monitoring is required, in part, at sediment waste discharges sites on private land through erosion control plans, through memorandum of understanding (MOU) with the County of Siskiyou for county controlled sites and through MOUs with the United States Forest Service and the Bureau of Land Management for federally owned lands. Monitoring of actions implemented to address temperature impairment (such as protection of riparian vegetation) will be undertaken by Regional Water Board staff as part of their ongoing outreach and education program and through the development of superseding permits as described in Table 4.

THEREFORE, IT IS HEREBY ORDERED that: the Regional Water Board waives the requirement to file a Report of Waste Discharge (ROWD) and obtain Waste Discharge Requirements (WDR), pursuant to Water Code section 13269, for discharges addressed in the *Action Plan for the Scott River Watershed Sediment and Water Temperature Total Maximum Daily Loads*, for dischargers who choose to participate in the on-going collaborative programs including the implementation, as applicable, of the recommended measures described in Table 4 of the *Action Plan for the Scott River Watershed Sediment and Water Temperature Total Maximum Daily Loads*.

Should a discharger choose not to participate, or if the Regional Water Board's Executive Officer determines additional measures are necessary and provides the discharger with written notice to that effect, the discharger must submit a Report of Waste Discharge (ROWD) and appropriate filing fee to the Regional Water Board immediately or in accordance with the written notice.

The State and Regional Water Board shall require compliance with the conditions pursuant to which the waiver is granted. This conditional waiver shall not apply to any discharges for which a WDR, waiver, or prohibition is issued under a separate action of the Board. This conditional waiver expires upon Regional Water Board adoption of a superseding regulatory action after the evaluation period specified for each source category, or after five years, whichever occurs first. This waiver is conditional and may be terminated at any time by the State or Regional Water Board; and

1. IT IS HEREBY ORDERED that on the date the *Scott River Watershed Sediment and Water Temperature TMDL Action Plan* becomes effective, all Dischargers seeking coverage under this Order shall allow Regional Water Board staff entry onto the affected property, with reasonable notice, for the purposes of observing, inspecting, and/or collecting samples or other monitoring information to document compliance or non-compliance with the Table 4 of the Action Plan.

Certification:

I, Catherine Kuhlman, Executive Officer do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, North Coast Region, on August 9, 2006.

Catherine Kuhlman
Executive Officer